

# Living Wage



MIAMIBEACH

# BRIEF HISTORY

The Living Wage Ordinance (2001-3301) was adopted by the Mayor and City Commission of the City of Miami Beach on April 18, 2001 and became effective April 28, 2001, with the intent to provide salary rates for full-time employee equivalent to the poverty level plus 10%, and therefore, eliminate sub-poverty level wages.

Amended on April 30, 2003, to define eligibility period as 90 days. Amended on September 6, 2006, to define eligibility period as the employee's date of hire.

Never indexed per CPI-U until now.

# LIVING WAGE AMENDMENT

At its June 9, 2010 meeting, the Mayor and City Commission passed and adopted Ordinance No. 2010-3682, which amended the City's Living Wage Ordinance, § 2-407 thru 2-410, indexing the Living Wage rate according to CPI-U over a three (3) year phase-in approach.

Ordinance No. 2010-3682, effective as of June 19, 2010 will include, but not be limited to the following:

- The definition of **Health Benefits**, which consists of wellness and preventive care, including maternity, which meets the requirements of Florida Statutes.
- Election of health benefits process during an **annual open enrollment** period for covered employees.
- A new **indexing** process that includes the determination to index or not index for inflation to be considered annually during the City Commission's review and approval of the City's annual operating budget.
- An **exemption** was added for a covered employee who regularly receives tip or gratuities as part of his/her pay provided that the service contractor complies with the requirements set forth in Section 2-408(i).

# LIVING WAGE RATES

Effective October 1, 2010, Service Contractors shall be required to pay all covered employees who provide services for covered service contracts, the hourly living wage rates based on the following three (3) year phase-in approach:

- Commencing with City fiscal year 2010-11 (October 1, 2010), the hourly living wage rate will be **\$10.16/hr.** with health benefits of at least **\$1.25/hr**, and **\$11.41/hr** without benefits;
- Commencing with City fiscal year 2011-12 (October 1, 2011), the hourly living wage rate will be **\$10.72/hr** with health benefits of at least **\$1.45/hr**, and **\$12.17/hr** without benefits; and
- Commencing with City fiscal year 2012-13 (October 1, 2012), the hourly living rate will be **\$11.28/hr** with health benefits of at least **\$1.64/hr**, and **\$12.92/hr** without benefits.

# APPLICABILITY

## **Living Wage requirements apply to:**

City employees, service contractors, and subcontractors of service contractors, that have entered into a service contract with the City involving the city's expenditures of over \$100,000 per year for covered services.

# COVERED SERVICES

- Food Preparation and/or Distribution
- Security Services
- Routine Maintenance services such as custodial, cleaning, refuse removal, repair, refinishing, and recycling
- Clerical or other non-supervisory office work, whether temporary or permanent
- Transportation and Parking Services
- Printing and Reproduction Services
- Landscaping, Lawn, and/or agricultural services
- Park and Public Property Maintenance

# APPLICABILITY

**"Covered Employee"** relates to anyone employed by the City or any Service Contractor, as further defined in this Division, either full or part time, as an employee with or without benefits.

**"Covered Employer"** relates to the City and any and all Service Contractors, whether contracting directly or indirectly with the City, **and subcontractors** of a Service Contractor.

**"Service Contractor"** is any individual, corporation (whether for profit or not for profit), partnership, limited liability company, joint venture, or other business entity who is conducting business in Miami Beach, and who is either:

1. paid in whole or part from one or more of the City's general fund, capital project funds, special revenue funds, or any other funds, whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; OR
2. engaged in the business of, or part of, a contract to provide, or a subcontract to provide, services, for the benefit of the city. However, this does not apply to contracts related primarily to the sale of products or goods.

# HEALTH BENEFITS

Effective June 19, 2010, pursuant to 2-408(c) entitled, *Annual Open Enrollment/Election of Benefits*, a covered employee will have the option to elect health benefits coverage during the annual open enrollment period provided by the service contractor each year. The covered employee will therefore have the right to be paid a lower or higher living wage rate, depending on whether or not health benefits coverage is elected by the employee.

**“Health Benefits”** shall, at a minimum, mean health insurance coverage which consists of wellness and preventive care, including maternity, and that meets the requirements of a “standard health benefits plan” as defined in Subsection 627.6699 (12)(b)(4), Florida Statutes\*, as may be amended from time to time.



# ...CONTINUED

*\* Florida Statutes, Subsection 627.6699(12)(b)(4):*

4. The standard health benefit plan shall include:

- a. Coverage for inpatient hospitalization;
- b. Coverage for outpatient services;
- c. Coverage for newborn children pursuant to s. [627.6575](#);
- d. Coverage for child care supervision services pursuant to s. [627.6579](#);
- e. Coverage for adopted children upon placement in the residence pursuant to s. [627.6578](#);
- f. Coverage for mammograms pursuant to s. [627.6613](#);
- g. Coverage for handicapped children pursuant to s. [627.6615](#);
- h. Emergency or urgent care out of the geographic service area; and
- i. Coverage for services provided by a hospice licensed under s. [400.602](#) in cases where such coverage would be the most appropriate and the most cost-effective method for treating a covered illness.

# Tip Credit Exemption

*Tip credit exemption.* For a regular employee who regularly receives tips or gratuities as part of his/her pay, a covered employer will be exempt from payment of the applicable hourly living wage rate for such employee provided that the following requirements are met:

1. *Covered employer must claim "tip credit" under the federal Fair Labor Standards Act (FLSA). Under FLSA an employer must pay tipped employees a cash wage of \$2.13 per hour if they claim a tip credit.*
2. *The exception shall only apply to covered employees who receive tips (i.e. waiters, bartenders, hostesses, busboys, etc.).*
3. *Tipped covered employees must receive at least the applicable hourly living wage rate when their direct wages and tips are combined.*

# EMPLOYER RESPONSIBILITIES

## What are the employer's responsibilities to the employee?

- Pay the employee at least bi-weekly the applicable hourly Living Wage rate.
- Offer the employee the option to elect health benefits coverage during the employer's annual enrollment period.
- Pay the employee at least \$1.25 per hour towards a health benefits plan (as defined under Florida law) for covered employees and their dependents.
- Pay wage rates in accordance with federal and all other applicable laws such as overtime.
- Post the Living Wage rates in a prominent place, or in employees' paychecks every six (6) months in English, Creole and Spanish.
- Permit interview of employees without interference.
- No retaliation or discrimination against an employee who files a complaint or otherwise asserts his/her rights under the Ordinance, is permitted.

# CONTINUED...

## What are the employer's responsibilities to the City?

- Maintain payroll records for three (3) years.
- File complete payroll records with the Procurement Contracts Compliance Specialist every six (6) months and allow inspection upon request.
- Submit proof of provision of health benefits to qualify to pay the lower Living Wage rate.
- Submit list of all subcontractors and corresponding payroll records for employees working on the contract.
- If employer offers health benefits, the plan must be a "health benefit plan"; as defined under Florida law.
- Ensure subcontractors' compliance with Ordinance.
- Maintain an "open enrollment period" at least once a year, during which employees can elect and advise the employees whether they wish to be covered under the employees' health plan.
- Pay employees who elect, during the annual open enrollment period, not to be covered under the employer's health benefits plan, the higher hourly Living Wage (by the next pay period following the employee's election).

# EMPLOYEE RIGHTS & ENFORCEMENT

## What are the employee's rights?

- A covered employee, or former covered employee who believes that the Ordinance applies, and whose employer is not complying with the Ordinance, has a right to file a complaint with the City's Procurement Director within (1) year after the violation occurred.
- Instead of filing a complaint with the City, but not in addition to, a covered employee may file an action in civil court.

## What are the City's complaint procedures and sanctions?

- The City will promptly investigate the complaint and require corrective action from the employer when applicable.
- If an employer fails to comply with any notice of corrective action issued, the City Manager may issue an order to appear at an administrative hearing before one of the City's special masters at a set time.

# RETALIATION

## Retaliation and Discrimination Barred:

A covered employer shall not discharge, reduce compensation of, or otherwise discriminate or take adverse action against any covered employee for making a complaint to the City, under the Ordinance. Allegations of retaliation or discrimination, if found true, shall result in an order of restitution.

# MONITORING

## What does the compliance monitoring process include?

- Conducting site visits and interviewing covered employees  
(An employer shall permit the City to observe work being performed at, in, or on the project site. Furthermore, the City may conduct interviews with the covered employees performing work at, in, or on the project site to determine compliance.)
- Review and Audit health benefit plans and payroll records
- Issue cure notices/violations
- Assess back wages when appropriate
- Perform investigation of complaints
- Follow-up on non-compliance issues
- Conduct Compliance Meetings/Participate in Hearings

# VIOLATIONS

## What are some examples of violations?

- Failure to post wages on site
- Underpayment of covered employees
- False or inaccurate payrolls
- Failure to submit payrolls
- Retaliation against employees
- Not allowing access to employees or payroll records.
- Failure to respond to a City issued letter by the due date



# PENALTIES & SANCTIONS

## What are some examples of violations?

- Stop Payment (for any amount deemed to employee)
- Contract termination
- Damages payable to the employee for each week per covered employee (s) found to have not been paid in accordance with the Ordinance.
- Pay the City's reasonable costs (for investigating and defending the complaint and remedying the violation).

Further complaint procedures and sanctions apply; please refer to Ordinance 2010-3682 for a complete description.

# SURVEY PAID TIME OFF

- Does your company provide any time off (i.e- sick, holiday, vacation) to its employees working on the City contract?
- If so, please identify how much of each.
- Does your company pay its employees for the "time off"?
- Is the "time off" billed to the City?

# PERSONNEL CONTACTS

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Q & A

Thank you for coming!